IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 134 OF 2004

SHRI BHIKU PEDNEKAR(SIN.DEC.) THROUGH L.RS., ...Appellants

Versus

MR.ROBERT FERNANDES AND 3 ORS., ...Respondents

Mr. S. R.Rivankar, advocate for the appellants.

Coram:- R. M. LODHA, J.

Date:- 24th August, 2005

P.C.

Heard Mr. Rivankar, learned counsel for the appellants. I perused the judgment of the Additional District Judge dated 30th July, 2004 and also the judgment of the Civil Judge, Junior Division, dated 29th January, 2004.

It is true that the judgment of the Appeal Court is that of reversal, but I find that the findings recorded by the Appeal Court are based on proper appreciation of the documentary as well as the oral evidence. The Appeal Court on consideration of the exhibits at a great length found that the trial Court recorded its findings without proper consideration of the evidence on record and that the findings were perverse.

The learned counsel for the appellants contended that the discarding of the licence granted by the Panchayat (Exh.D.W.1/A colly.) by the Appellate Court was not proper. The Appeal Court considered this aspect in paragraph 27 of the judgment by observing thus:-

> "27. Much is said on behalf of the defendants on the licence granted by the Panchayat. A cursory perusal of the same at Dw1/A colly would show that a permission was granted by the Panchayat of Dhargal dated 1.6.1990 to Ramesh Dw 2 but without in any manner indicating the

property in which the said structure was being constructed or to which it related. Even assuming at the highest that it did relate to the suit property and the structure, it does not support the case of the defendants in as much as the plan annexed to the permission shows the proposed structure at a distance of about 52 metres from the road unlike the case of the defendant that it was hardly 5 to 6 metres from the road."

For the reasons recorded by the Appellate Court which are based on evidence on record, not giving much credence to the licence Exh.DW1/A colly. by the Appeal Court cannot be faulted.

The findings recorded by the Appeal Court are concluded on facts.

No substantial question of law arises.

Second Appeal is dismissed in limine.

R. M. LODHA, J.